TracFone Wireless, Inc. – Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Offer Global Resale Services of an Unaffiliated Carrier Between the U.S. and Foreign Points as an International Carrier

Filed March 31, 2003

ATTACHMENT 3 TO APPLICATION – PUBLIC INTEREST STATEMENT

The streamlined grant of this Application will serve the public interest, convenience and necessity by promoting the Commission's procompetitive goals. TracFone rolled out the first prepaid wireless service in the United States in 1996, and today is an industry leader in the growing prepaid wireless segment of the overall commercial mobile radio service ("CMRS") market. The company provides exclusively prepaid CMRS service to over two million customers throughout the United States, including Puerto Rico and the U.S. Virgin Islands, by reselling the services of over 40 unaffiliated licensed cellular network operators. Granting TracFone authority to provide resold international services will further increase competition in the emerging prepaid wireless market.

Through contractual arrangements with large and small CMRS carriers, TracFone offers prepaid CMRS service wherever mobile wireless telephone services are available in the United States. Rather than employing the traditional method of paying for wireless minutes used during the prior month, TracFone allows its customers to purchase airtime minutes in advance of using them. TracFone's customer base primarily includes low-volume users, such as individuals who purchase a wireless phone for safety reasons, people who seek to avoid long-term service commitments that contain substantial early termination penalties, consumers who want to control their costs by purchasing specified quantities of service in advance, and low-income users and young people who may not satisfy the traditional credit requirements or security deposit demands imposed by other CMRS carriers.

To obtain TracFone's prepaid wireless service, customers must purchase a digital handset, referred to as a "TracFone," which includes 20 minutes of calling time. The customer must call the customer service center or use TracFone's website to activate the phone and to obtain a local telephone number. Additional airtime may be purchased by buying prepaid wireless airtime cards at over 60,000 locations or through TracFone's website. Currently, prepaid wireless airtime cards are sold in increments of 30, 60, 150, and 300 units at manufacturer's suggested retail prices of $17.99, $24.99, $39.99, and $74.99, respectively, each with 60 days of access. TracFone relies on intelligence within its handsets to track the customer's prepaid minutes, unlike other prepaid wireless carriers which rely on the carrier's switch or other means. The handset displays the customer's actual airtime balance and expiration date on the handset's screen.

TracFone currently offers new digital handsets that deploy either TDMA or CDMA digital technology, and the company will begin offering digital GSM services later this year.[1] TracFone handsets may be purchased directly from TracFone or from over 30,000 major retail stores nationwide. Although TracFone subsidizes the costs borne by consumers to acquire the handsets, TracFone does not impose service commitment periods of greater than one year, as many CMRS carriers currently do, in an attempt to recover the handset subsidy.

TracFone's digital service provides its customers with voice mail, caller ID, and call waiting to meet their wireless telecommunications needs. Currently, however, TracFone's customers may make international calls only by using other carriers' prepaid or calling card services or other means of dial-around. Grant of this Application will further enhance TracFone's service offerings by allowing its customers to use TracFone's services to make international prepaid calls from their handsets. As the Commission has recognized, the resale of

[1] Approximately 50% of TracFone's existing customers use analog-only handsets.

wireless services has public interest benefits and can speed the development of competition by facilitating market entry even before new entrants have built out their facilities.[2] Granting TracFone authority to resell an unaffiliated international carrier's facilities-based service will provide U.S. customers with an additional competitive alternative for international telecommunications services and will not pose a threat to competition in any U.S. market.

Through its commitments made in the World Trade Organization ("WTO") Basic Telecommunications Agreement ("WTO Agreement"), the United States has adopted an unambiguous "open entry" policy under which the Commission presumes that entry by a foreign carrier from a WTO Member country will advance the public interest. As the Commission concluded in the *Foreign Carrier Participation Order*, open entry stimulates competition in the U.S. market for international telecommunications services, thereby creating incentives for carriers to develop innovative new services as well as to offer existing services at lower prices.[3] In implementing the U.S. commitments, the Commission established a rebuttable presumption that an international Section 214 application filed by an entity with ownership from a WTO Member country does not raise competitive concerns, unless granting the application would pose a "very high risk to competition" in a U.S. market that cannot be addressed by existing conditions the Commission places on U.S. international carriers considered dominant under its rules.[4]

TracFone poses no such risk to competition in any U.S. market, much less the "very high risk to competition" required to rebut the Commission's unambiguous open entry policy. As a cellular reseller in the competitive international telecommunications marketplace,

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[2] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, First Report and Order, 11 FCC Rcd 18455 (1996).

[3] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶ 10 (1997) ("*Foreign Carrier Participation Order*").

[4] *Id*. at ¶¶ 50-52.

TracFone could not pose a risk to competition in any market because it will use exclusively the facilities of unaffiliated carriers. Indeed, the Commission previously granted a former TracFone wireless affiliate international Section 214 resale authority, authorizing Cellular Communications of Puerto Rico, Inc. ("CCPR") to resell switched international services in 1999.[5]

TracFone's affiliations with Telgua and Telmex provide no basis for reaching a different conclusion here. To the contrary, TracFone is a separate, distant corporate affiliate that operates wholly independently of Telgua and Telmex. In fact, it was not until 1999, three years after TracFone began operations, that Telmex invested in TracFone, an interest which Telmex subsequently spun off to América Móvil. Furthermore, because TracFone is a cellular reseller that operates using exclusively the facilities of unaffiliated carriers, it will have no ability to control the routing of international traffic and thus no ability to adversely affect competition in any U.S. telecommunications market.

In light of the clear public interest benefits that would accrue to U.S. consumers, the Commission should grant TracFone Section 214 authority, on a streamlined basis, to resell the international switched services of an unaffiliated, authorized U.S. common carrier to all foreign points authorized by the Commission's rules. Such action is mandated by the United States' WTO commitments, raises no new or novel questions of law, and is amply warranted because

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5 *Wireless Telecommunications Bureau and International Bureau Complete Review of Proposed Investment by Telefonos de Mexico, S.A. de C.V. in Parent of Cellular Communications of Puerto Rico*, Public Notice, DA-99-2286 (rel. Oct. 22, 1999). In addition, the Commission granted Telmex/Sprint Communications, L.L.C. Section 214 authority to provide resold switched international telecommunications services in 1997 and subsequently granted authority to transfer control of that entity to a wholly-owned subsidiary of Telmex. *See supra* note 7 of Attachment 1. Only five months ago, the Commission approved a proposed 40 percent indirect investment by Telmex in XO Communications, Inc. ("XO"), a facilities-based carrier. *XO Communications, Inc.*, 17 FCC Rcd 19212, at ¶ 31. On October 21, 2002, XO advised the Commission that the proposed transaction would not be consummated. *See* Letter from Brad E. Mutschelknaus and Joan M. Griffin, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 02-50 (filed Oct. 21, 2002).

TracFone's entry poses no risk to competition in any domestic or international U.S. telecommunications market.